

AMENDMENTS TO THE DRAWINGS

Please enter currently amended Figures 1 and 6 provided in this Response:

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REMARKS

In the Nov 29, 2004 Office Action, Examiner made the following objections and rejections: 1) FIGURES 1 and 6 for new matter; 2) claims 36, 43, 45 for grammatical errors; 3) claims 29-37, 45-47, and 27 under 35 USC 112, first paragraph; 4) claims 21-47 and 26 under 35 USC 112, second paragraph; 5) claims 21-27, 30-32, 38, 39, 41-47 under 102(b); and 6) claims 28, 33-37, and 40 under 103(a). This response addresses each of these objections and rejections.

DRAWING OBJECTIONS

Applicant believes that the revised FIGURES 1 and 6 provided January 20, 2004 was presented only to clarify existing matter specifically in response to a previous Office Action, and did not present any new matter. Nevertheless, FIGURES 1 and 6 have been currently amended to revise those items that appear not fully supported in the original figures.

As regards currently amended FIGURE 1, applicants wish to point out that figure element 30 in original FIGURE 1 has a two lobe configuration that arguably presents a wing-like appearance of a wing nut. Accordingly, in currently amended FIGURE 1 submitted with this Response, the wing-like nut figure element 30 is retained. However, to comport with observations of the November 29, 2004 Office Action, the overlapping joints are removed and replaced with the end-to-end section abutment as depicted in the original FIGURE 1. Applicants respectfully submit that currently amended FIGURE 1 more clearly illustrates original FIGURE 1 without introducing new matter.

As regards currently amended FIGURE 6, the curved articulating ends and annular nut as depicted in original FIGURE 6 is now more clearly illustrate without introducing new matter.

For reasons cited above, applicants respectfully request entry of currently amended FIGURES 1 and 6.

GRAMMATICAL OBJECTIONS

Claims 36, 43, and 45 have been amended to correct the indicated grammatical errors.

SECTION 112, FIRST PARAGRAPH REJECTIONS

Claims 29-37 and 45-47 were rejected under 35 USC 112, first paragraph, because “[T]he specification, while being enabling for a hanger having a continuous strip without articulation and a hanger having two sections with articulation, does not reasonably provide enablement for a strip or continuous strip with articulation.” In response, claims 26, 30, 33, 36, and 45 have been amended to use the word ‘device’ instead of ‘strip’ or ‘continuous strip.’ The specification is enabling for a device with a pivotable joint: “Further, the tire-hanging device 20 also preferably incorporates a pivotable joint 28 located in the elongated section 24.” See page 2, line 2 of original specification. Therefore, applicant submits that independent claims 26, 30, 33, 36, and 45 are enabling as amended. Furthermore, applicant submits that dependent claims 29, 31, 32, 34, 35, 37, 46, and 47 are also enabling for the same reason.

Claim 27 was rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. The Office Action stated that the specification does not discuss that the hook will hold the wheel at the same height as the axle of a vehicle supported by the horizontal member. The specification does discuss, as claimed, that the hook will hold the wheel at approximately the same height as the axle of a vehicle supported by the horizontal member. For example, on page 3, line 6, the original specification reads, “Likewise, dependent upon the length of the elongated section 24 and the relative angles of the tire-hanging device 20, the tire may be held at a variety of locations relative to the ground, hoist, and vehicle.” This approximate height is also supported by page 3, lines 10 – 13 and the corresponding Figures. See also page 3, lines 30 – 33 (“The device allows the tires to be removed from the vehicle and stored at the workmen’s upright height. This prevents the worker from having to repeatedly bend over and lift heavy objects from the


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ground to the work height at the vehicle, or vice versa, thereby increasing safety and comfort of the workers.”)

SECTION 112, SECOND PARAGRAPH REJECTIONS

Claims 21-47 were rejected under 35 USC 112, second paragraph, as being indefinite. Examiner stated that it was not clear in all of the independent claims whether applicant is claiming the combination of the tire hanger with a vehicle hoist, a horizontal member of a vehicle hoist, a wheel, and/or a wheel with axle hole. It is clear from the language of all the independent claims 21, 26, 30, 33, 36, 38, 41, and 45 that the applicant is claiming a *tire hanger device* configured to *removeably engage* a horizontal support member of a vehicle hoist. Therefore, applicant respectfully submits that these independent claims are not indefinite. Furthermore, applicant submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not indefinite for the same reason. Applicant did not invent and is not claiming the hoist, wheel, or axle hole.

Claim 26 was rejected under 35 USC 112, second paragraph, as being vague and indefinite because “first end arranged to wrap around” is vague and indefinite as there is insufficient structure recited to support the function of wrap around.” Applicant respectfully disagrees, but Claim 26 have nevertheless been amended to use ‘mounted by at least partially circumscribing the horizontal support’ in lieu of ‘wrap around.’ The original specification is enabled for ‘mounted by at least partially circumscribing the horizontal support’, see for example: “U-shaped ... tire-hanging device 20 as it is mounted on an automotive hoist.” See also page 2 of the original specification and corresponding Figure 5. Claim 21 was also amended accordingly.

SECTION 102(B) REJECTIONS

Under 35 USC 102, every limitation of a claim must *identically* appear in a single prior art reference for it to anticipate the claim. See *Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997). There must be *no difference* between the claimed invention and the reference disclosure. See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Anticipation can be found only when the reference discloses *exactly* what is claimed. See *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985).

The instant application claims a device having all of the following elements:

- (1) a hoist wrap section having an open end;
- (2) arranged to removeably engage a horizontal support member of a vehicle hoist;
- (3) a tire hanging section arranged to engage a wheel; and
- (4) a middle section disposed between the hoist wrap section and the tire hanging section wherein the middle section has a length and articulated joint whereby;
- (5) the hoist wrap section is shaped so as to at least partially circumscribe the horizontal support member of the vehicle hoist; and be
- (6) slidably positionable along the horizontal support member at a user-selected location.

Starling

Starling (WO 00/55031) does not anticipate the instant claim because every limitation of this claim does not identically appear in Starling, there are differences between this claim and Starling, and Starling does not disclose exactly what is claimed. See *Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997), *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991), *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985).

First, the instant invention discloses an **open-ended** hoist wrap section. Starling discloses only a closed-ended hoist mounting section that in fact teaches away from being

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open-ended: 1) “Fasteners such as *bolts and nuts* secure the L-brackets tightly together *around* the hoist member...”, 2) “[The mount body] may comprise other means, such as *weld or bolts, for securing a support body* to the hoist.”, 3) “*Bolts operate between* the top and bottom mount plates, to pull the plates together about the lift arm.”, 4) “A bar is *welded* or otherwise secured on the hoist member...”, 5) “[H]oles may be drilled through the vertical or horizontal hoist members to facilitate securing a mount body, such as a support bracket, *directly to the hoist by screws or bolts.*” 6) “[The] front plate is *welded* or otherwise secured onto a hoist member.”, and 7) “[A] pair of mount plates pulled toward each other by fasteners operating *between the plates* ... The plates are disposed on opposing surfaces of a hoist member and the *bolts operating between the plates* pull the plates towards each other to, in effect, *squeeze the hoist member* and secure the apparatus thereon.” WO 200055031, 2000 WL 34089526, WIPO PCT Application, Sep 21, 2000 (emphasis added). Therefore, Starling cannot satisfy the legal standard of anticipation because Starling discloses a closed-ended hoist mounting section that in fact teaches away from being open-ended. An open-ended and thus much more easily attachable and removable device was not invented by Starling, but by Applicant. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Starling. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Starling for the same reason.

Second, regarding claims 25, 29, 30, 31, 33, 34, 36, 37, 39, 40, 45, and 47, Applicant claims a pivotable joint in the middle section. Because the pivotable joint is in the middle section, the claimed device is capable, in some embodiments, of rotation about a horizontal axis for rotation in a vertical plane. In other embodiments, the device is capable of rotation about any axes, vertical and non-vertical for rotation in any planes, horizontal or non-horizontal, depending upon the embodiment chosen. In contrast, both in structure and function, Starling discloses a swivel with *only* a vertical axis of rotation perpendicular to

horizontal so as to permit *only* rotation in a horizontal plane: 1) “The support arm swivels or pivots in a substantially *horizontal plane* about the substantially *vertical* pivot pin or bolt.” and 2) “Figure 3 shows the swivel action of the support arm about the substantially *vertical pivot pin*.” WO 200055031, 2000 WL 34089526, WIPO PCT Application, Sep 21, 2000 (emphasis added). Therefore, Applicant respectfully submits that Starling does not anticipate claims 25, 29, 30, 31, 33, 34, 36, 37, 39, 40, 45, and 47.

Third, the instant claim discloses a middle section with a pivotable joint. The middle section in Starling does not disclose a pivotable joint. Rather, the middle section in Starling is simply attached pivotably to the hoist wrap section: “The pivot pin extends through the support arm near a first end of the arm, allowing the arm to pivot about the pivot pin.” WO 200055031, 2000 WL 34089526, WIPO PCT Application, Sep 21, 2000. Therefore, Applicant respectfully submits that Starling does not anticipate claims 25, 29, 30, 31, 33, 34, 36, 37, 39, 40, 45, and 47.

Fourth, Examiner expressly acknowledged that every limitation of the present application does not identically appear in Starling: “Starling disclosed all the claimed features of the applicant’s invention except for the hoist wrap end as being U-shaped.” See Page 7. Because Starling does not teach a hoist wrap end as being U-shaped, Applicant respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Starling. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Starling for the same reason.

In summary, Starling does not anticipate the instant invention because not every limitation of the instant claim identically appears in Starling; there are distinct differences between the instant claims and Starling, and Starling does not disclose exactly what is claimed.

Hull

Hull (US Patent 1,450,084)) does not anticipate the instant claim because every limitation of this claim does not identically appear in Hull, there are differences between this claim and Hull, and Hull does not disclose exactly what is claimed. See *Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997), *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991), *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985).

First, Hull teaches a tire hanger with a hook means to suspend from the horizontal display rack: “[T]ires may be hung by means of hooks or hangers.” US Patent No. 1,450,084. The tire hanger in the present application does not hang from the horizontal support, rather it wraps around the hoist. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Hull. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Hull for the same reason.

Second, the present application teaches a wrap section arranged to removeably engage a horizontal support member of a vehicle hoist. In contrast, Hull teaches away from a removeably engaging hanger: 1) “[H]angers especially constructed for the purpose ... for simultaneously locking all the hangers in place...” and 2) “[W]ith means superposed on said support to lock the hanger in position.” *Id.* Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Hull. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Hull for the same reason.

Third, the present application teaches a tire hanging section arranged to engage a wheel. Hull, on the other hand, teaches a hanger that wraps around the tire as opposed to the


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wheel: 1) “[H]angers of either form are fitted over the tires....” and 2) “[C]omprising a hanger ... for resiliently gripping a tire to be displayed....” Id. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Hull. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Hull for the same reason.

Fourth, the present application teaches a middle section having a length and a pivotable joint. Hull does not disclose a middle section with a joint. Therefore, Applicant respectfully submits that Hull does not anticipate claims 25, 29, 30, 31, 33, 34, 36, 37, 39, 40, 45, and 47.

Finally, the present application teaches a wrap section that is shaped so as to at least partially circumscribe the horizontal support member of a vehicle hoist. The hanger in Hull is not shaped so as to at least partially circumscribe the horizontal support member of a vehicle hoist. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Hull. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Hull for the same reason.

In summary, Hull cannot anticipate the instant invention because every limitation of the instant claim does not identically appear in Hull, there are distinct differences between the instant claim and Hull, and Hull does not disclose exactly what is claimed.

The express purpose of the Hull hanger is an “[a]utomobile tire display means.” Id. In contrast, the purpose of the present invention is to assist in the removal of tires from automobiles. The difference in purpose and use matters. It matters because, even if the structures were very similar or even nearly identical (a point Applicant contests), Hull does not anticipate under the Doctrine of Slight Changes.

Under the Doctrine of Slight Changes, if the old product must be altered, *however slightly*, to fit the new use discovered by the inventor, then there is no novelty bar to a patent on the product as altered. 1-1 Chisum on Patents 1.03. The structure of the old product may be very close to that of the altered product, so close that it would normally be held to anticipate if the difference in use were not considered; nevertheless, the difference in use will suffice to distinguish the products and prevent anticipation. *id.* Judge Learned Hand in *White* held “[T]he necessary adjustments were simple ... The fact that the changes were slight is quite irrelevant, so long as they were essential to the purpose, as they were. While the statute grants monopolies only for new structures, and not for new uses, invention is not to be gauged by the necessary physical changes, so long as there are some, but by the directing conception which alone can beget them.” *H.C. White v. Morton E. Converse & Son Co.* (1927), *Traitel Marbel Co. v. U.T. Hungerford Brass & Copper Co.* (1927). Therefore, the elements of the Doctrine are 1) the old product must be altered, however slightly to 2) fit the new use. In the instant application, to use the Hull hanger for the new purpose of assisting in the removal of tires from automobiles, several significant structural changes would be required. First, the mounting means disclosed in Hull could not attach to a vehicle hoist without structural changes. Second, the tire hanging section of the Hull hanger could not engage a wheel without structural changes. As previously mentioned, the hanger in Hull wraps around a tire and not a wheel. Third, the tire mounting section of Hull could not easily engage or disengage a mounted tire without structural modification because the tire mounting section in Hull completely circumscribes the tire and prevents “[a]ll possibility of the tire slipping inside the hanger....” A tire mounting section that grips the entire tire and prevents removal would render it useless in the context of changing tires. Therefore, Hull cannot anticipate the present invention because the tire hanger in Hull would require significant structural changes to fit the new purpose. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Hull.

Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Hull for the same reason.

Fourth, Examiner expressly acknowledged that every limitation of the present application does not identically appear in Hull: “Hull disclosed all the claimed features of the applicant’s invention except for the hoist wrap end as being U-shaped.” See Page 7. Because Hull does not teach the hoist wrap end as being U-shaped, Applicant respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not anticipated by Hull. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not anticipated by Hull for the same reason.

In summary, Hull does not anticipate the instant invention because every limitation of the instant claim does not identically appear in Hull, there are distinct differences between the instant claim and Hull, and Hull does not disclose exactly what is claimed. Applicant therefore respectfully suggests that the claims are all allowable over Hull.

SECTION 103(A) REJECTIONS

Starling in view of Huot

First, the present invention would not be obvious to one skilled in the art based on the combined references of Starling and Huot. As Examiner states, Starling does not disclose a U shaped hoist wrap section. However, Huot does not disclose a U shaped hoist wrap section either. Rather, Huot discloses a U shaped stock *truck rack* mounting section. Therefore, at the very most (and applicant contests even this) the combined references of Starling and Huot teach a tire hanging section arranged to engage a wheel that is mounted to the side of a stock truck rack. What is taught in the present application is a tire hanging section arranged to engage a wheel that is mountable to and for an *automotive hoist*. Applicant therefore

respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not obvious over Starling in view of Huot. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not obvious over Starling in view of Huot.

Second, it is impermissible to combine Starling and Huot. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). Two or more prior art references may be combined to demonstrate obviousness, but the prior art must provide a suggestion or motivation to combine the references. *Elf Atochem North America, Inc. v. LaRoche Industries, Inc.*, 85 F. Supp.2d 336 (D. Del. 2000). Furthermore, one cannot pick and choose among individual elements of assorted prior art references to recreate the claimed invention absent some teaching or suggestion in the references to support their use in the particular claimed combination. *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878 (Fed. Cir. 1988).

Therefore, to satisfy obviousness by combining teachings it is necessary that the references teach, suggest, or motivate the combination. It is impermissible to otherwise pick and choose among the individual elements of assorted prior art references to recreate the claimed invention.

To combine Starling with another reference that may have an open-ended hoist wrap section it is necessary that Starling teach, suggest, or motivate an open-ended hoist wrap section. However, Starling teaches away from an open-ended hoist wrap section: 1) “Fasteners such as *bolts and nuts* secure the L-brackets tightly together *around* the hoist member....”, 2) “[The mount body] may comprise other means, such as *weld or bolts*, for *securing a support body* to the hoist.”, 3) “*Bolts operate between* the top and bottom mount plates, to pull the plates together about the lift arm.”, 4) “A bar is *welded* or otherwise

secured on the hoist member....”, 5) “[H]oles may be drilled through the vertical or horizontal hoist members to facilitate securing a mount body, such as a support bracket, *directly to the hoist by screws or bolts.*” 6) “[The] front plate is *welded* or otherwise secured onto a hoist member.”, and 7) “[A] pair of mount plates pulled toward each other by fasteners operating *between the plates* ... The plates are disposed on opposing surfaces of a hoist member and the *bolts operating between the plates* pull the plates towards each other to, in effect, *squeeze the hoist member* and secure the apparatus thereon.” WO 200055031, 2000 WL 34089526, WIPO PCT Application, Sep 21, 2000 (emphasis added). In summary, it is impermissible to combine Starling with another reference that may teach an open-ended hoist wrap section because Starling does not teach, suggest, or motivate an open-ended hoist wrap section. To combine Huot with another reference that teaches an automotive hoist mounting section, it is necessary that Huot teach, suggest, or motivate an automotive hoist mounting section. Nowhere does Huot teach, suggest, or motivate one to make the significant structural modifications that would be required to make its stock truck rack mounting section capable of mounting to an automotive hoist. In summary, it is impermissible to combine Huot with another reference that may teach a hoist mounting section because Huot does not teach, suggest, or motivate a hoist mounting section. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not obvious over Starling in view of Huot. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not obvious over Starling in view of Huot.

Finally, Examiner is respectfully reminded that one cannot pick and choose among individual elements of assorted prior art references to recreate the claimed invention absent some teaching or suggestion in the references to support their use in the particular claimed combination. *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878 (Fed. Cir. 1988).

Hull in view of Huot

First, the present invention would not be obvious to one skilled in the art based on the combined references of Hull and Huot. As Examiner states, Hull does not disclose a U shaped hoist wrap section. However, Huot does not disclose a U shaped hoist wrap section either. Rather, Huot discloses a U shaped stock *truck rack* mounting section. Therefore, the combined references of Hull and Huot teach a tire hanger that circumscribes the tire for display on a stock truck rack. What is taught in the present application is a tire hanging section arranged to engage a wheel that is mounted to an *automotive hoist*. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not obvious over Hull in view of Huot. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not obvious over Hull in view of Huot.

Second, it is impermissible to combine Hull and Huot. Examiner states that Hull disclosed all the claimed features of applicant's invention except for the hoist wrap end as being U shaped. Per the above analysis, Hull actually fails to disclose many of the claimed features of the applicant's invention. However, assuming *arguendo* that a U shaped hoist wrap is the only deficiency of the Hull disclosure, which it is not, to combine Hull with another reference that may teach a U shaped hoist wrap section it is necessary that Hull teach, suggest, or motivate a U shaped hoist wrap section. Nowhere in Hull does it teach, suggest, or motivate one to modify the mounting means to a U shaped automotive hoist wrap mounting structure. Therefore, it is impermissible to combine Hull with another reference that may teach an open-ended hoist wrap section because Hull does not teach, suggest, or motivate an open-ended hoist wrap section. Applicant therefore respectfully submits that independent claims 21, 26, 30, 33, 36, 38, 41, and 45 are not obvious over Hull in view of Huot. Furthermore, applicant respectfully submits that dependent claims 22, 23, 24, 25, 27,

28, 29, 31, 32, 34, 35, 37, 39, 40, 42, 43, 44, 46, and 47 are not obvious over Hull in view of Huot.

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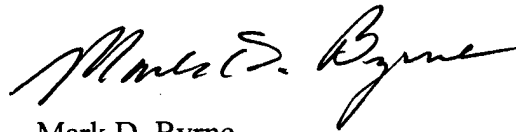
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CONCLUSION

Applicant requests entry of currently amended FIGURES 1 and 6 and consideration and allowance of pending claims 21 - 47.

Respectfully submitted,

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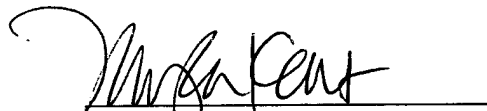


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March 29, 2005
Date of Deposit


Myla Kent